# UNIFORM CIVIL CODE

**PART I**

## THE INDIAN MARRIAGE AND MATRIMONIAL REMEDIES ACT 1986

(Draft Proposal)

**INDIAN SECULAR SOCIETY**
**ILS LAW COLLEGE**
**1986**

THE INDIAN MARRIAGE AND MATRIMONIAL REMEDIES ACT 1986

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# FOREWORD

AT ITS FOUNDING CONFERENCE in Bombay, on 24 November 1968, the Indian Secular Society adopted the following Resolution:

> This Conference is of the opinion that just as secularism implies equal civic and political rights, it also implies equal obligations regardless of caste, creed, or sex. The Conference therefore demands that Government should bring forward legislation for the adoption of a uniform civil code for the entire people of India as directed by Article 44 of the Constitution of India.

Since its inception one of the main demands of the Indian Secular Society has been for the enactment of a Uniform Civil Code. This demand is based on respect for fundamental human rights and universal moral values regardless of religion, caste, class, or sex, and is not motivated by antagonism to, or aimed against any religion. If we wish to create a modern liberal nation, an open democratic society in our country, then the basic rights and obligations of all citizens ought to be the same regardless of religion, language, or community. A Uniform Civil Code for all the citizens of India is a precondition for the growth of a feeling of common nationality and national integration.

Although there has been a great deal of controversy on the question of a Uniform Civil Code, no concrete proposal or blueprint has so far been presented for discussion. The Indian Secular Society, therefore, decided to request Dr. S. P. Sathe, Principal of the ILS Law College, Pune, who is also a Vice-president of the Indian Secular Society, to prepare a draft Uniform Civil Code for discussion at a Seminar on the subject. A draft regarding Marriage and Matrimonial Remedies entitled **The Indian Marriage and Matrimonial Remedies Act 1986** was prepared by Ms. Jaya Sagade and Ms. Vaijayanti Joshi, both Lecturers at the ILS Law College, under the guidance of Dr. S. P. Sathe.

A Seminar was held at the ILS Law College in Pune, on 27 and 28 September 1986 to discuss this Draft. The Seminar

was inaugurated by Justice V. D. Tulzapurkar. About 50 social workers, lawyers, sociologists, and professors participated. As a result of the discussions and on the basis of consensus on the various provisions, a new Draft has been prepared and is now being presented to the people for further consideration and discussion. The Seminar also discussed guidelines for an Indian Law of Inheritance, a draft of which will also be released for discussion at a later date.

It must be made clear that this Draft of an **Indian Marriage and Matrimonial Remedies Act 1986** is not an official proposal of the Indian Secular Society or the ILS Law College. There were naturally differences of opinion in regard to some of the provisions, for instance about change of religion being a ground for divorce. But this Draft is the first concrete step towards the evolution of a secular Uniform Civil Code for India. It will be realized that, for historical reasons, the preparation of a Uniform Civil Code for all the citizens of India which would be acceptable to all is a difficult and complex undertaking. Nevertheless, we hope that this effort, the first by any group or organisation in India, will serve as a valuable contributioin towards the enactment of a Uniform Civil Code for India.

We would like to acknowledge with thanks the financial assistance granted by the Indian Council for Social Science Research (ICSSR) for this project, and express our appreciation to the participants in the Seminar for their interest and contributions to the discussions.

A. SOLOMON
President, Indian Secular Society

15 November 1986.

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# INTRODUCTION

## Uniform Civil Code

THERE HAS BEEN A HEATED CONTROVERSY on the subject of uniform civil code in recent times. This was particularly provoked by the decision of the Supreme Court in the **Shah Bano** case. In fact, very few people really know what a uniform civil code would be like. The Hindu opinion is wrongly under the impression that only the Muslims would be opposed to such a code. The Muslim opinion thinks that a uniform code would mean their subjection to Hindu law. The debate on uniform civil code must be freed from such communal overtones. A uniform civil law is desired not in order to satisfy Hindu chauvinism or to humiliate the non-hindus. It is desired as a rational, humanistic and just law for human affairs.

Barring marriage, divorce, maintenance, adoption, succession and inheritance, there is already a uniform law in India. Even on marriage and divorce, the Special Marriage Act, 1954, is a uniform law applicable to those who choose to get married under it. There are laws such as the Dowry Prohibitiion Act or the Child Marriage Restraint Act which are applicable to all irrespective of their religion. Section 125 of the Criminal Procedure Code 1973 is a uniform civil law on maintenance of destitute wives. The definition of 'wife' in that section is wide enough to include a divorcee also. Unfortunately, the recent legislation enacted by Parliament entitled the Muslim Women's (Protection of Rights on Divorce) Act, 1986, has excluded Muslim women from the purview of Section 125 of the Code of Criminal Procedure subject to the exception of both parties to a marriage agreeing to be governed by it. The constitutional validity of that Act has now been challenged before the Supreme Court. The passing of that Act showed how the ruling party was prepared to throw its concern for helpless Muslim women to the winds in order to appease the fundamentalist and obscurantist sections. The story with other parties, if they hold power, would not be different.

Why do we need a uniform civil code? The reply is that in a secular state, the laws must be separated from religion.

The result of such an effort is bound to be a uniform code. But more important than such a doctrinaire commitment to secularism is the fact that our existing laws based on outmoded ideas such as inequality of sexes, feudal property relations and irrelevant traditions need to be re-examined from the standpoint of justice, equality and dignity of the individual. Modernisation of the laws with a view to making them consistent with the constitutional values would doubtless take us towards uniformity. We need not aim at uniformity for the sake of uniformity. India is a plural society and legal pluralism is bound to prevail. Any effort towards legal regimentalism is bound to impose unnecessary strain on national unity and integration. We have, therefore, come to believe that even in a uniform law, we might have to allow plurality of rules.

We have, therefore, set before ourselves the task of drafting a hypothetical uniform law of marriage, divorce and matrimonial remedies. The purpose of such an exercise is to provide a basis for meaningful discussion on the question of a secular uniform family law. While drafting it, we have not been merely idealistic or aspirational but have essentially looked at the practical side of it. We are envisaging such a code for a society in which religion plays a vital role. It is not religion as understood in a philosophical sense but as understood in terms of rituals that has a hold on the minds of the people. Although we must aim at ultimate secularization of the law, this can be achieved only gradually and therefore we might have to proceed cautiously. The law cannot be far ahead of the society because in that case, it would lack legitimacy. We have, therefore, followed the policy of permitting religious practices to continue without such practices being necessary for the validity of a marriage. The draft therefore has made compromises in order to allow innocent religious rituals to continue. The difference is that instead of actively enforcing such religioius practices, our proposed draft tolerates them or leaves them out of the purview of the law. On matters such as prohibited degrees of relationship the draft allows religious practices and customs to continue. But the Code definitely recommends abolition of polygamy and unilateral divorce. It provides more comprehensive provisions for mainte-

nance. It makes ceremonies of marriage legally redundant without encroaching upon the freedom of a person to observe them. Some provisions are bound to meet with stiff social resistance. For example, a provision declaring child marriage void would have been of significant social consequence. Therefore, the draft proposes to make them voidable. Compulsory registration of marriages has been provided under the draft code. This may also require mobilisation of large human resources for its implementation. The Government may appoint many persons such as teachers, social workers as registrars for this purpose.

A Uniform Civil Code is a constitutional ideal but its main thrust is towards social justice. The accompanying Indian Marriage Act is intended to serve as a basis for discussion.

Our main concerns are (1) to secularise the law; (2) to modernise it; and (3) to reorganise it with a view to making it subserve the ideals of liberty, justice and equality. Women suffer much more than men by the inequitous provisions of the existing personal and statutory laws which do not square well with the ideals of gender equality and dignity of the individual. The draft suggests improvement in this regard

S. P. SATHE
Principal, ILS Law College

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# THE CONSTITUTION OF INDIA

## Preamble

WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a sovereign socialist secular democratic Republic and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all:

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation....

DIRECTIVE PRINCIPLES OF STATE POLICY

### Article 44

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

FUNDAMENTAL DUTIES

### Article 51A

It shall be the duty of every citizen of India:

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

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# The Indian Marriage and Matrimonial Remedies Act. 1986

## CHAPTER I

## TITLE AND CONDITIONS OF MARRIAGE

**Sec. 1 Short Title, Extent and Commencement**

1. This Act may be called the Indian Marriage and Matrimonial Remedies Act, 1986.

2. It extends to the whole of India except the State of Jammu and Kashmir and Mizoram. It applies also to the citizens of India who are residing abroad.

3. It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

**Sec. 2 Definitions**

1. **Court:** Means in any area for which there is a City Civil Court that court, and in any other area the Principal Civil Court of original jurisdiction, and includes any other Civil Court which may be specified by the State Government by notification in the Official Gazette as having jurisdiction in respect of the matters dealt with in this Act.

2. **Degrees of Prohibited Relationship:** A man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship.

3. **Marriage Officer:** Means Notary or any other person as prescribed. For the purposes of this Act in its application to the citizens of India who are residing abroad, the Central Government may by notification in the Official Gazette specify such officers as it may think fit to be Marriage Officer.

4. **Minor:** Means a girl below 18 years of age and a boy below 21 years of age.

5. **Personal Law:** Means the Indian Divorce Act, 1869, the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Muslim Personal Law as defined in the Shariat Act, 1937, and the Hindu Marriage Act, 1955.

6. **Prescribed:** Means prescribed by rules made under this Act.

**Sec. 3 Conditions Relating to Performance of Indian Marriages**

Notwithstanding anything contained in any other law for the time being in force relating to performance of marriages, a marriage between any two persons of different sexes either of whom is a citizen of India, may be performed under this Act, if at the time of the marriage, the following conditions are fulfilled viz.

(a) neither party has a spouse living;

(b) neither party:

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity or epilepsy.

(c) the male has completed the age of 21 years and the female the age of 18 years;

(d) the parties are not within the degrees of prohibited relationships (as per First Schedule) unless the Personal law of either of the parties to the marriage in force immediately preceding the commencement of this Act permits such a marriage.

## CHAPTER II

## PERFORMANCE OF MARRIAGES

### Sec. 4 Declaration by Parties and Witnesses

(a) Before a marriage is performed, the parties to the marriage and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Second Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

(b) Place and form of performance: A marriage may be performed at the office of the Marriage Officer, or at such other place within his jurisdiction as the parties may desire, upon such conditions and on payment of such additional fees as may be prescribed.

(c) A marriage shall not be complete and binding on the parties, unless each party makes a declaration in the presence of the Marriage Officer and three witnesses in the form prescribed.

(d) A marriage may be celebrated in any form which the parties may choose to adopt. However, the validity of the marriage will not depend upon the celebration of the marriage.

### Sec. 5 Certificate of Marriage

1. When a marriage has been performed, the Marriage Officer shall enter a certificate thereof in the form specified in the Third Schedule in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book", and such certificate shall be signed by the parties to the marriage and by three witnesses.

2. On a certificate being entered on the Marriage Certificate Book by the Marriage Officer, the certificate shall be conclusive evidence of the fact that the marriage

under this Act has been performed and that all formalities required for that purpose have been complied with.

3. (a) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained.

(b) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

4. When a final decree of divorce or a final decree of nullity has been obtained, the parties to such a petition shall communicate in writing to the Marriage Officer before whom such a marriage was performed about the cancellation of such a marriage.

**Sec. 6 Registration of Marriage Celebrated in Other Forms**

1. **Registration:** Any marriage not being a marriage registered under the Special Marriage Act, 1954, celebrated before the commencement of this Act, may be registered by a Marriage Officer if the following conditions are fulfilled:

(a) A ceremony of marriage has been performed between the parties and they have been living together as husband and wife since such ceremony;

(b) neither party has at the time of registration any spouse living other than the person with whom the marriage is sought to be registered;

(c) neither party:

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(ii) though capable of giving valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity or epilepsy; at the time of registration;

(d) the husband has completed the age of 21 years and wife has completed age of 18 years at the time of the registration;

(e) the parties are not within the degrees of prohibited relationship;

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

2. **Procedure for registration:** Upon receipt of an application signed by both the parties to the marriage for registration of their marriage under this Chapter, the Marriage Officer shall give notice thereof in such a manner as may be prescribed and after allowing a period of thirty days for objections and after hearing objections received within that period, shall, if satisfied that all conditions mentioned in Sub-Section (1) are fulfilled, enter a certificate of marriage in the Marriage Certificate Book in the form specified in the Fourth Schedule and such certificate shall be signed by the parties to the marriage and by the three witnesses.

3. **Effect of Registration:** When a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage performed under this Act, and all children born after the date of ceremony of marriage, but before registration under this Act, whose names shall also be entered in the Marriage Certificate Book, shall in all respects be deemed to be and always to have been the legitimate children of their parents.

## CHAPTER III

## MATRIMONIAL REMEDIES

### Sec. 7 Restitution of Conjugal Rights

When either the husband or the wife has, without reasonable cause, withdrawn from society of the other, the aggrieved party may apply by petition to the Court for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights.

### Sec. 8 Judicial Separation

1. A petition for judicial separation may be presented to the Court either by the husband, or the wife:

   (a) on any of the grounds specified in Section 12(1) and Section 13 on which a petition for divorce may be presented;

   (b) on the ground of failure to comply with a decree for restitution of conjugal rights;

   and the Court on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation.

2. Where the Court grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the Court may on a petition presented by both the parties rescind the decree.

### Sec. 9 Void Marriages

Any Marriage performed under this Act may be declared null and void by a decree of nullity on a petition

presented to the court by either party thereto against the other party if:

(i) either of the parties was not a citizen of India; or

(ii) the condition mentioned in Section 3(a) is not complied with; or

(iii) the condition mentioned in Section 3(c) is not complied with; or

(iv) the condition mentioned in Section 3(d) is not complied with; or

(v) the condition mentioned in Section 4 is not complied with

at the time of marriage.

**Sec. 10 Voidable Marriages**

1. Any marriage performed under this Act shall be voidable and may be annulled by a decree of nullity on a petition presented to the Court by the aggrieved party against the other party if:

(1) The respondent was at the time of the marriage pregnant by some person other than the petitioner; or the respondent had sexual intercourse with a woman other than the petitioner which resulted in pregnancy of such woman before or at the time of marriage; provided that the Court shall not grant a decree unless the Court is satisfied that:

(a) the petitioner was at the time of the marriage ignorant of the facts alleged;

(b) proceedings were instituted within a year from the date of the marriage; and

(c) the marital intercourse with the consent of the petitioner had not taken place since the discovery by the petitioner of the existance of the grounds for a decree; or

(2) The consent of either party to the marriage was obtained by force or fraud, as to the nature of the

ceremony or as to any material fact or circumstance concerning the respondent; provided that the court shall not grant a decree if:

(a) proceedings have not been instituted within one year after the force had ceased or, as the case may be, the fraud had been discovered; or

(b) the petitioner has with his or her free consent lived with the other party to the marriage as husband or wife after the force has ceased or, as the case may be, the fraud had been discovered; or

(3) The marriage is in contravention of the condition specified in Sec. 3(b) (i)(ii)(iii).

**Sec. 11 Legitimacy of Children born of Void and Voidable Marriages**

1. Notwithstanding that marriage is null and void under Sec. 9, any child of such marriage which would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of this Act and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

2. Where a decree of nullity is granted in respect of a voidable marriage under Sec. 10, any child begotten or conceived before the decree is made, which would have been the legitimate child of the parties to the Marriage if the marriage had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

**Sec. 12 Divorce**

1. Any marriage performed before or after the commencement of this Act, may be dissolved by a decree of

divorce on a petition presented to the Court by either party on the ground that the other party:

(i) has, after the performance of the marriage, voluntary sexual intercourse with any person other than his or her spouse; or

(ii) has deserted the petitioner for a continuous period of not less than one year immediately preceding the presentation of the petition;

Explanation: The expression "desertion" means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly; or

(iii) has since the performance of the marriage treated the petitioner with cruelty; or

(iv) is undergoing a sentence of imprisonment for seven years or more for an offence under any of the Indian Laws; or

(v) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent;

Explanation: 'Mental Disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia, 'Psychopathic Disorder': means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(vi) has been addicted to intoxicating drugs or to alcoholism to such an extent that the petitioner

cannot reasonably be expected to live with the respondent; or

(vii) has not been heard of as being alive for a period of three years or more by those persons who would have naturally heard of the respondent, if the respondent had been alive; or

(viii) has been suffering from venereal disease in a communicable form, or Acquired Immuno Deficiency Syndrome (AIDS); or

(ix) has been suffering from virulent and incurable form of leprosy, the disease not having been contracted from the petitioner; or

(x) has converted to a religion other than that at the time of the marriage; or

(xi) has renounced the world for a period of one year or more by entering into any religious order; or

(xii) is impotent at the time of the filing of the petition; or

(xiii) has failed to comply with a decree or order of maintenance passed by any court under any law or if there is no resumption of cohabitation between the parties since the passing of such decree or order as the case may be, for one year or more; or

(xiv) has failed to provide maintenance for a period of two years or more immediately preceding the presentation of the petition; or

(xv) has been guilty of bestiality or unnatural offence.

2. Either party to a marriage, whether performed before or after the commencement of this Act, may present a petition for divorce to the Court on any of the following grounds:

(i) that there has been no resumption of cohabitation as between the parties to the marriage after the

passing of a decree for judicial separation in a proceeding to which they were parties for a period of one year or more immediately preceding the presentation of the petition;

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties for a period of one year or more immediately preceding the presentation of the petition.

3. A wife may present a petition for divorce to the Court on the ground:

(i) that the husband is guilty of rape or sodomy since the performance of the marriage; or

(ii) in the case of any marriage performed before the commencement of this Act, that the husband had married again before such commencement validly and legally or that any other legally wedded wife of the husband married before such commencement was alive at the time of the performance of the marriage of the petitioner;

provided that in either case, the other wife is alive at the time of the presentation of the petition.

**Sec. 13 Divorce by Mutual Consent**

1. A petition for divorce may be presented to the Court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together, and that they have mutually agreed that the marriage should be dissolved.

2. On a motion of either of the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the peti-

tion is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties, and after making such inquiry as it thinks fit, that a marriage has been performed under this Act, and that the averments in the petition are true, pass a decree declaring the marriage be dissolved with effect from the date of the decree.

**Sec. 14 No Petition for Divorce to be presented within One Year of the Marriage**

1. Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of entering the certificate of marriage in the Marriage Certificate Book. Provided that the Court may, upon application made to it allow a petition to be presented before one year has elapsed since the date of marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

2. In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the Court shall have regard to the interests of the children of the marriage, if any, and to the question whether

there is a reasonable probability of reconciliation between the parties before the expiration of the said one year.

**Sec. 15 Persons when may Marry Again**

When a decree of divorce or decree of nullity has been obtained and either there is no right of appeal against the decree, and if there is such a right, an appeal has been presented, but has been dismissed, it shall be lawful for either of the parties to marry again.

## CHAPTER IV

## MAINTENANCE AND CUSTODY

**Sec. 16 Maintenance Pendente lite, and expenses of travelling, and expenses of proceedings**

Where in any proceedings under this Act, it appears to the Court that either the wife or the husband, as the case may be, has not independent income sufficient for her or his support and the travelling expenses to attend such proceedings, it may on an application of the wife or the husband, order the opponent to pay to the applicant a monthly sum, covering maintenance, expenses of the proceeding and travelling expenses to attend such proceedings, having regard to the applicant's own income and the income of the opponent, as may appear to the Court to be reasonable.

**Sec. 17 Maintenance**

1. If any spouse having sufficient means neglects or refuses to maintain:

(a) the other spouse unable to maintain himself/herself; or

(b) his or her legitimate or illegitimate minor child unable to maintain itself; or

(c) his or her legitimate or illegitimate major unmarried daughter unable to maintain herself; or

(d) his or her legitimate or illegitimate child (not being a married daughter) who has attained majority, where such a child is, by reason of any physical or mental abnormality or injury unable to maintain itself;

the Court on an application of the wife or the husband and upon proof of such neglect or refusal, order such spouse to pay such sum, either in one instalment, or in monthly instalments, or such periodic instalments as the Court may deem fit for the maintenance of the spouse or the legitimate or illegitimate children mentioned above.

**Explanation:** 'Spouse' includes a divorced person.

2. For the purpose of fixation/determination of the amount of maintenance the Court shall have regard to the opponent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case.

3. For the purpose of securing the payment of maintenance, the Court may require a proper instrument to be executed by all necessary parties and suspend the pronouncement of its decree, if any, under this Act, until such instrument has been duly executed.

4. In case any such order for maintenance has not been complied with by the opponent, it may be enforced in a manner provided under the Code of Civil Procedure, 1908, for the execution of decrees.

5. The Court, if satisfied, that there is a change in the circumstances of either party at any time, may at the instance of either party, modify or rescind such order in such manner as the Court may deem just.

6. If the Court is satisfied that the party in whose favour an order has been made under this section has had illicit sexual relationship with any person it may at the instance of such spouse vary, modify or rescind any such order in such manner as it may deem just.

7. Application under this Section shall be tried as expeditiously as possible and be concluded within six months from the date of service of the notice of the application on the respondent.

**Sec. 18 Maintenance in case of Void and Voidable marriages**

An aggrieved party of void marriage according to Sec. 9 and of the voidable marriage according to Sec. 10 is entitled to claim maintenance under this Act.

**Sec. 19 Custody of Children**

In any proceedings under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by a petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as would have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the Court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

**Sec. 20 Disposal of Presented Property**

In any proceedings under this Act, the Court may make such provisions in the decree as it deems just with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

## CHAPTER V

## JURISDICTION AND PROCEDURE

### Sec. 21 Court to which Petition shall be presented

Every petition under this Act shall be presented to the Court within the local limits of whose ordinary original civil jurisdiction: (i) the marriage was performed; or (ii) the respondent at the time of the presentation of the petition resides; or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of three years or more by those persons who would naturally have heard of him if he were alive.

### Sec. 22 Contents and Verification of Petitions

1. Every petition presented under this Act shall state as distinctly as the nature of the case permits, the facts on which the claim to relief is founded, and except in a petition under Secs. 9 and 13, shall also state that there is no collusion between the petitioner and the other party to the marriage.

2. The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

### Sec. 23 Application of Act V of 1908

Subject to other provisions in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (V of 1908).

**Sec. 24 Power to Transfer Petitions in Certain Cases**

1. Where:

(a) a petition under this Act has been presented to the Court having jurisdiction by a party to a marriage praying for a decree for a judicial separation under Sec. 8, or for a decree of divorce under Sec. 12, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under Sec. 8, or for decree of divorce under Sec. 12 on any ground, whether to the same Court or to a different Court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-sec. (2).

2. In a case where subsection (1) applies:

(a) if the petitions are presented to the same Court, both the petitions shall be tried and heard together by that Court;

(b) if the petitions are presented to different Courts, the petition presented later be transferred to the Court to which the earlier petition was presented, and both the petitions shall be heard and disposed of together.

3. In case where clause (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure 1908 (5 of 1908), to transfer any suit or proceeding, shall exercise its powers to transfer a petition as if it had been empowered so to do under the said Code.

**Sec. 25 Special provision relating to Trial and Disposal of Petitions under the Act**

1. The trial of a petition under this Act shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day to day

until its conclusion unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded;

2. Every petition under this Act shall be tried as expeditiously as possible, and shall conclude within six months from the date of service of notice of the petition on the respondent.

3. Every appeal under this Act shall be heard as expeditiously as possible and shall conclude within six months from the date of service of notice of appeal on the respondent.

**Sec. 26 Documentary Evidence**

Notwithstanding anything in any enactment to the contrary, no document other than a certificate of marriage shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.

**Sec. 27 Proceedings to be in Camera and may not be printed or published**

1. Every proceeding under this Act shall be conducted *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgement of the High Court or of the Supreme Court printed or published with the previous permission of the Court.

2. If any person prints or publishes any matter in contravention of the provisions contained in sub-sec. (1), he shall be punishable with fine which may extend to one thousand rupees.

**Sec. 28 Decree in Proceedings**

1. In any proceeding under this Act, whether defended or not, if the Court is satisfied that:

(a) any of the grounds for granting relief exists; and

(b) the petitioner (except in cases where the relief is sought by him on the grounds specified in sub-clause (i) sub-clause (ii) or sub-clause (iii) of

Clause (b) of Section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(c) where the ground of the petition is the ground specified in clause (i) of Sub-Section (1) of Section 12, the petitioner has not in any manner been accessory to, or connived at, or condoned the act or acts complained of, or where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and

(d) where a divorce is sought on the ground of mutual consent, then such consent has not been obtained by force, fraud or undue influence; and

(e) the petition, not being a petition presented under Section 9, is not presented or prosecuted in collusion with the respondent; and

(f) there has not been any unnecessary or improper delay in instituting the proceeding; and

(g) there is no other legal ground why relief should not be granted, then and in such a case, but not otherwise, the Court shall give relief by granting a decree.

2. Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do so consistently with the nature and circumstance of the case, to make every endeavour to bring about a reconciliation between the parties;

3 For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper to do so, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court, if the parties fail to name any person, with directions to report to the Court as to whether reconciliation can be and has been effected and the Court shall in disposing of the proceeding have due regard to the report.

4. In every case, it shall be the duty of the Court passing a judgement, a decree or an order to give a copy of such judgement, decree or order free of cost to each of the parties to a petition on an application on the day on which such judgement, decree, or order is passed.

**Sec. 29 Relief for Respondent in Divorce and other Proceedings**

In any proceeding for divorce, or judicial separation, or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief claimed under this Act on that ground; and if the petitioner's adultery, cruelty, or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled to if he or she had presented a petition seeking such relief on that ground.

**Sec. 30 Appeal from Decrees and Orders**

1. An appeal from a decree or an order made by a Court in any proceedings under this Act shall lie to the High Court.
2. There shall be no appeal on the subject of costs only.
3. Every appeal shall be preferred within a period of thirty days from the date of the decree or order.
4. Such appeal shall not be filed unless a notice of the appeal has been posted by the appellant on the registered address of the other side by registered post acknowledgement due, with one copy under certificate of posting and one copy by recorded delivery.

**Sec. 31 Enforcement of Decrees and Orders**

All decrees and orders made by the Court in any proceeding under this Act shall be enforced in a manner in which decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced.

## CHAPTER VI

## PUNISHMENTS

**Sec. 32 Punishment for Bigamy**

Every person having a spouse living at the time of the marriage procures a marriage of himself or herself to be performed under this Act shall be deemed to have committed an offence under Section 494 of the Indian Penal Code (Act 45 of 1860) or under Section 495 of the Indian Penal Code (Act 45 of 1860), as the case may be, and the marriage so performed shall be void.

**Sec. 33 Punishment for parent or guardian concerned in a child marriage**

1. Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, does any act to perform the marriage or permits it to be performed, or negligently fails to prevent it from being performed, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.
2. For the purpose of this Section, it shall be presumed, unless and until the contrary is proved that where a child marriage has been performed, the person having charge of such minor has negligently failed to prevent the marriage from being performed.

**Sec. 34 Punishment for signing a False Declaration or Certificate**

Every person making, signing, or attesting any declaration or certificate required by or under this Act containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be guilty of the offence described in Section 199 of the Indian Penal Code (Act 45 of 1860).

**Sec. 35 Punishment for wrongful action of Marriage Officer**

Any marriage officer who knowingly and wilfully performs a marriage under this Act in contravention of the provisions mentioned in Section 3(a) (c) (d), or Section 4, or Section 5, or Section 6, or Section 15 shall be punishable with simple imprisonment for a term which may extend to one year or fine which may extend to five hundred rupees or with both.

**Sec. 36 Penalty for failure to provide maintenance**

1. Any person who fails to comply with the order of the Couurt passed under Section 17 or Section 18 shall be punished with simple imprisonment for a term which may extend to one year or with fine which shall not be less than the amount of maintenance due from him or her or with both.

2. When the Court imposes a sentence of fine or sentence of which the fine forms a part, the Court may while passing the judgement, order the whole or any part of the fine recovered to be paid to the applicant in lieu of the maintenance which is due to him or her.

## CHAPTER VII

## POWER TO MAKE RULES

**Sec. 37 Power to make Rules**

1. The State Government may make rules to carry out the purposes of this Act.

2. Without prejudice to the generality of the foregoing provision, the government may provide by rules for:

(a) specifying the categories of persons who might be appointed as Marriage Officers by the State Government by a notification in the official gazette.

(b) the duties and powers of the Marriage Officers and the areas in which they may exercise jurisdiction.

(c) form of the declaration to be made by the parties to the marriage and the witnesses before the marriage officer as required by Section 4(c) of this Act.

(d) form and manner in which Marriage Certificate Book required by or under Section 5(1) of this Act shall be maintained.

(e) fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act.

(f) manner and form of a public notice required to be given by the marriage officer before registering a marriage celebrated before the commencement of this Act as required by Section 6(2).

(g) any other matter which may be or requires to be prescribed.

**3.** The High Court may make rules consistent with the provisions of this Act and the Code of Civil Procedure, 1908 for the purpose of carrying into effect the provisions of Chapters III, IV and V of the Act.

## CHAPTER VIII

## SAVINGS AND REPEALS

**Sec. 38 Savings**

1. A marriage performed between any two persons before the commencement of this Act which is otherwise valid shall not be deemed to be invalid or even to have been invalid under the provisions of this Act.

2. Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring or for dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

**Sec. 39 Repeals**

1. Indian Divorce Act 1869.
2. Indian Christian Marriage Act, 1872.
3. Parsi Marriage and Divorce Act, 1936.
4. Dissolution of Muslim Marriage Act, 1939.
5. Special Marriage Act, 1954.
6. Hindu Marriage Act, 1955.
7. Muslim Women's (Protection of Rights on Divorce) Act, 1986, to the extent of its inconsistency with this Act.
8. Muslim Personal law: relating to marriage, dower (maher) divorce, maintenance, provided, however, only the provisions of Muslim Personal Law relating to custody shall continue to apply to the extent they are not inconsistent with this Act.

---

## THE FIRST SCHEDULE

(*See Section* 2(5) *"Degree of Prohibited Relationship"*)

### Part I

1. Mother
2. Father's widow (step-mother)
3. Mother's mother
4. Mother's father's widow (step grandmother)
5. Mother's mother's mother
6. Mother's mother's father's widow (step great grandmother)
7. Mother's father's mother
8. Mother's father's father's widow (step great grandmother)
9. Father's mother
10. Father's father's widow (great grandmother)
11. Father's father's widow (step grandmother)
12. Father's mother's father's widow (step great grandmother)
13. Father's father's mother
14. Father's father's father's widow (step great grandmother)
15. Daughter
16. Son's widow
17. Daughter's daughter
18. Daughter's son's widow
19. Son's daughter
20. Son's son's widow
21. Daughter's daughter's daughter
22. Daughter's daughter's son's widow
23. Daughter's son's daughter
24. Daughter's son's son's widow
25. Son's daughter's daughter
26. Son's daughter's son's widow
27. Son's son's daughter
28. Son's son's son's daughter
29. Sister
30. Sister's daughter
31. Brother's daughter
32. Mother's sister

33. Father's sister
34. Father's brother's daughter
35. Father's sister's daughter
36. Mother's sister's daughter
37. Mother's brother's daughter

Explanation: For the purpose of this part, the expression "widow" includes a divorced wife.

## Part II

1. Father
2. Mother's husband (step-father)
3. Father's father
4. Father's mother's husband (step grandfather)
5. Father's father's father
6. Father's father's mother's husband (step great grandfather)
7. Father's mother's father
8. Father's mother's mother's husband (step great grandfather)
9. Mother's father
10. Mother's mother's husband (step grandfather)
11. Mother's father's father
12. Mother's father's father's father
13. Mother's mother's father
14. Mother's mother's mother's husband (step great grandfather)
15. Son
16. Daughter's husband
17. Son's son
18. Son's daughter's husband
19. Daughter's son
20. Daughter's daughter's husband
21. Son's son's son
22. Son's son's daughter's husband

23. Son's daughter's son
24. Son's daughter's daughter's husband
25. Daughter's son's son
26. Daughter's son's daughter's husband
27. Daughter's daughter's son
28. Daughter's daughter's daughter's husband
29. Brother
30. Brother's son
31. Sister's son
32. Mother's brother
33. Father's brother
34. Father's brother's son
35. Father's sister's son
36. Mother's sister's son
37. Mother's brother's son

Explanation: For the purpose of this part, the expression "husband" includes a divorced husband.

## THE SECOND SCHEDULE

(See Section 4)

### Declaration to be made by the Bridegroom

I, A.B., hereby declare as follows:

1. I am at the present time unmarried (or a widower or a divorcee, as the case may be).
2. I have completed years of age.
3. I am not related to C.D. (the bride) within the degrees of prohibited relationship.
4. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

Sd/- A.B. (the Bridegroom)

Member conducting declaration.

**Declaration to be made by the Bride**

I, C.D., hereby declare as follows:

1. I am at the present time unmarried (or a widow or a divorcee, as the case may be).
2. I have completed years of age.
3. I am not related to A.B. (the Bridegroom) within the degrees of prohibited relationship.
4. I am aware that, if any statement in this declaration is false and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

Sd/- C.D. (the Bride)

Signed in our presence by the above named A.B. and C.D. So far as we are aware there is no lawful impediment to the marriage.

(Sd/-) G.H. )
(Sd/-) I.J. ) Three witnesses
(Sd/-) K. L. )

Guardian

(Sd./-) E. F., Marriage Officer

Dated the day of 19.....

2A. S.4(3)

## THE THIRD SCHEDULE

(See Section 5)

## CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the day of 19 A.B. and C.D. (herein give particulars of the parties) appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required by Section 4 and that a marriage under this Act was solemnized between them in my presence.

(Sd./-) E. F., Marriage Officer

(Sd./-) A. B., Bridegroom

(Sd./-) C. D., Bride

(Sd/-) G.H. )
(Sd/-) I.J. ) Three witnesses
(Sd/-) K.L. )

Dated the day of 19 .

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## THE FOURTH SCHEDULE

(See Section 6)

## CERTIFICATE OF MARRIAGE CELEBRATED IN OTHER FORMS

I, E.F., hereby certify that A.B. and C.D. (herein give particulars of the parties) appeared before me this day of 19 and that each of them, in my presence and in the presence of three witnesses who have signed hereunder have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage registered under this Act, the said marriage, has, this day of 19 been registered under this Act, having effect as from:

(Sd./-) E. F., Marriage Officer

(Sd./-) A. B., Husband

(Sd./-) C. D., Wife

(Sd/-) G.H. )
(Sd/-) I.J. ) Three witnesses
(Sd/-) K.L. )

Dated the day of 19

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